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OFFICE OF PETITIONS

In re Application of :
Xiao-Mai Zhou : DECISION ON APPLICATION
Application No. 09/580,523 : FOR
Filed: May 30, 2000 : PATENT TERM ADJUSTMENT
Atty Docket No. A7483 :
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed 9 November, 2006. Applicants request that the patent term adjustment at the time of the mailing of the Notice of Allowance be corrected from zero (0) days to one hundred twenty (120) days.

The application for patent term adjustment is **GRANTED** to the extent indicated.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is ONE HUNDRED SEVENTEEN (117) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On 11 August, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term

adjustment (PTA) to date is 0 days. The instant application for patent term adjustment was timely filed.¹

Applicants state that the application is not subject to a terminal disclaimer.

Applicants dispute the reduction of 368 days of PTA for applicant delay in filing a response to the Notice of Informal or Non-Responsive Amendment mailed on 17 April, 2003. In particular, applicants state that a response was filed on 2 May, 2003, but was not entered due to Office error. Applicants assert that duplicate copy of the response was filed on 12 April, 2004, after the examiner stated that the response filed on 2 May, 2003, was not of record. Thus, applicants contend that there should be a PTA adjustment for PTO delay between the filing of the reply on 2 May, 2003, and the mailing of the non-final Office action on 9 July, 2004.

Applicants further dispute a reduction of 2 days of PTA for the filing of applicants' response to the non-final Office action mailed on 17 January, 2003. Specifically, it is asserted that "[a]s Applicant's Response to the Non-Final Rejection mailed January 13, 2003 was due April 15, 2003 (April 13th and 14th were a Saturday and a Sunday), Applicant's delay was 13 days."

With regard to the filing of a response to the Notice of Informal or Non-Responsive Amendment mailed on 17 April, 2003, a review of the record reveals that applicant's reply was in fact filed on 2 May, 2003, but was not entered due to Office error. As such, the reply filed on 19 April, 2004, was a duplicate copy of the response originally filed on 2 May, 2003. Therefore, applicants are entitled to a PTA adjustment of 314 days for PTO delay in mailing the Office action on 12 November, 2004, after the filing of applicant's reply on 2 May, 2003.

With regard to applicants' assertion that the reduction of 2 days of PTA for applicant delay is not warranted, applicants' position is not supported by the record. At the outset, the Non-Final Rejection was mailed on 17 January, 2003, not 13 January, 2003, as asserted by applicants. As such, the response was due on 17 January, 2003. Further, whether or not any days

¹ PALM records indicate that the Issue Fee was also received on 9 November, 2006.

were Saturdays or Sundays has no bearing on PTA determination, as the date used in calculation under 37 CFR 1.704(b) is the actual date of receipt. See 1.703(f). As such, the correct reduction is fifteen (15) days for applicant delay. In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is ONE HUNDRED SEVENTEEN (117) days (344 (30+314) of PTO delay, reduced by 227 (2+29+15+31+58+92) days of Applicant delay).

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The Office will forward the file to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PAIR Screen

PALM INTRANET

Day : Thursday
Date: 2/15/2007

Time: 14:52:44

PTA Calculations for Application: 09/580523

Application Filing Date:	05/30/2000	PTO Delay (PTO):	30
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	580
Post-Issue Petitions:	0	Total PTA (days):	117
PTO Delay Adjustment:	667		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
87	02/15/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	368		
86	02/15/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		15	
85	02/15/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	314		
75	08/11/2006	MAIL NOTICE OF ALLOWANCE			
74	08/11/2006	MAIL EXAMINER'S AMENDMENT			
73	07/24/2006	ISSUE REVISION COMPLETED			
72	07/24/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
71	07/24/2006	EXAMINER'S AMENDMENT COMMUNICATION			
70	07/24/2006	NOTICE OF ALLOWABILITY			
69	07/08/2006	DATE FORWARDED TO EXAMINER			
68	06/29/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
67	07/08/2006	DATE FORWARDED TO EXAMINER			
66	06/29/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		92	56
65	07/08/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
64	06/29/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
63	06/29/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
62	06/02/2006	DATE FORWARDED TO EXAMINER			
61	05/26/2006	AMENDMENT AFTER FINAL REJECTION			
60	05/26/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
59	05/26/2006	MISCELLANEOUS INCOMING LETTER			
58	05/15/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			

57	04/27/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)		
56	12/29/2005	MAIL FINAL REJECTION (PTOL - 326)		
55	12/23/2005	FINAL REJECTION		
54	11/30/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE		
53	11/30/2005	DATE FORWARDED TO EXAMINER		
52	11/22/2005	RESPONSE AFTER NON-FINAL ACTION		
51	08/25/2005	MAIL NON-FINAL REJECTION		
50	08/22/2005	NON-FINAL REJECTION		
49	07/15/2005	DATE FORWARDED TO EXAMINER		
48	07/07/2005	RESPONSE AFTER NON-FINAL ACTION	58	45
47	07/07/2005	REQUEST FOR EXTENSION OF TIME - GRANTED		
46	05/03/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
45	02/10/2005	MAIL NON-FINAL REJECTION		
44	02/07/2005	NON-FINAL REJECTION		
43	11/27/2004	DATE FORWARDED TO EXAMINER		
42	11/12/2004	RESPONSE AFTER NON-FINAL ACTION	31	39
41	11/12/2004	REQUEST FOR EXTENSION OF TIME - GRANTED		
40	11/12/2004	WORKFLOW INCOMING AMENDMENT IFW		
39	07/12/2004	MAIL NON-FINAL REJECTION		
38	07/09/2004	NON-FINAL REJECTION		
37	05/12/2004	DATE FORWARDED TO EXAMINER		
36	04/19/2004	RESPONSE AFTER NON-FINAL ACTION	368	31
35	04/29/2004	REQUEST FOR EXTENSION OF TIME - GRANTED		
34	05/30/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
33	04/24/2003	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT		
32	04/24/2003	DATE FORWARDED TO EXAMINER		
31.1	04/17/2003	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION		
31	04/17/2003	RESPONSE AFTER NON-FINAL ACTION		
30	01/17/2003	MAIL NON-FINAL REJECTION		
29	01/13/2003	NON-FINAL REJECTION		
28	12/19/2002	NOTICE OF APPEAL FILED		

27	12/19/2002	REQUEST FOR EXTENSION OF TIME - GRANTED		
26	10/24/2002	DATE FORWARDED TO EXAMINER		
25	10/18/2002	AMENDMENT AFTER FINAL REJECTION	29	23
24	10/18/2002	REQUEST FOR EXTENSION OF TIME - GRANTED		
23	06/19/2002	MAIL FINAL REJECTION (PTOL - 326)		
22	06/17/2002	FINAL REJECTION		
21	04/17/2002	DATE FORWARDED TO EXAMINER		
20	03/21/2002	RESPONSE AFTER NON-FINAL ACTION	2	18
19	03/21/2002	REQUEST FOR EXTENSION OF TIME - GRANTED		
18	12/19/2001	MAIL NON-FINAL REJECTION		
17	12/17/2001	NON-FINAL REJECTION		
16	10/04/2001	DATE FORWARDED TO EXAMINER		
15	09/26/2001	RESPONSE TO ELECTION / RESTRICTION FILED		
14	08/29/2001	MAIL RESTRICTION REQUIREMENT	30	-1
13	08/27/2001	REQUIREMENT FOR RESTRICTION / ELECTION		
12	02/13/2001	CASE DOCKETED TO EXAMINER IN GAU		
11	02/01/2001	APPLICANT HAS FILED A VERIFIED STATEMENT OF SMALL ENTITY STATUS IN COMPLIANCE WITH 37 CFR 1.27		
10	10/17/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
9	09/12/2000	CASE DOCKETED TO EXAMINER IN GAU		
8	08/31/2000	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE		
7	08/17/2000	APPLICATION DISPATCHED FROM OIPE		
6	08/17/2000	APPLICATION IS NOW COMPLETE		
5	07/31/2000	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED		
4	07/31/2000	CORRESPONDENCE ADDRESS CHANGE		
3	06/20/2000	IFW SCAN & PACR AUTO SECURITY REVIEW		
2	05/30/2000	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE		
1	05/30/2000	INITIAL EXAM TEAM NN		

Search Another: Application#

EXPLANATION OF PTA CALCULATION

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To go back use Back button on your browser toolbar.

Back to [PALM](#) | [ASSIGNMENT](#) | [OASIS](#) | [Home page](#)